IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17730 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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TATA CHEMICALS LTD

Versus

REGIONAL PROVIDENT FUND COMMISSIONER-II

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Appearance:

1. Special Civil Application No. 17730 of 2003

MR KS NANAVATI of NANAVATI ASSOCIATES for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 04/02/2004

ORAL JUDGEMENT

1. Rule. Mr. Mehta, learned advocate for the respondent waives services of rule. With the consent of

parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner for challenging the legality and validity of the order dated 9.12.2003/12.12.2003 so far as it relates to directing the petitioner-Company to serve its summons upon 129 Contractors.

3. Heard learned senior counsel Mr. K.S. Nanavati for the petitioners and Mr. Mehta for the respondent.

4. The contention raised on behalf of the petitioner is that there is no power to compel the petitioner to serve the summons to the Contractor. Mr. K.S. Nanavati submitted that whatever details of the Contractors available with the Company are given and the petitioner is also ready to give further details if they are in a position to do so. It is further submitted that the Contractors are impleaded as parties, and, therefore, it will be for the concerned authority to effect the service through proper machinery and the petitioner cannot be compelled to effect service of the summons. Mr. Nanavati relied on the decision of a co-ordinate Bench of this Court [Coram: Ravi R. Tripathi, J] in Spl. C.A. No. 15321 of 2003.

5. Mr. Mehta, on behalf of the respondent, submitted interalia that the Contractors are the agents of the petitioner Company, and it is the petitioner Company who is having all the details, and, therefore, with a view to speed up the proceedings, the petitioner is required to serve the summons. Mr. Mehta has not been able to show any source of authority on the concerned officer to compel the petitioner to serve the summons. However, Mr. Mehta tried to submit that there is power under section 7.A.(2) with the officer.

6. Section 7.A(2) of the Employees Provident Fund and Misc. Provisions Act, 1957 provides that for conducting inquiry, the authority shall have the same powers as are vested in a court under the Code of Civil Procedure, and any inquiry shall be deemed to be judicial proceedings within the meaning of Secs. 193 and 228 and for the purpose of section 196 of the IPC. Therefore, there is power to issue summons and the said aspect is not even disputed by the learned counsel for the petitioner. However, so far as the mode of service of summons is concerned, it will be either through the agency serving the summons, the government machinery or the police as the case may be, as per the provisions of the Civil Procedure Code. The reference may be made to

the relevant provisions of Code of Civil Procedure for service of summons as per Order V Rules 9 to 31 of C.P.C. providing for issue and service of summons. It may be that in a given case if the authority finds that the summons cannot be served personally, then it may resort to procedure of service by post, by substituted service through public notice and other mode as per C.P.C. However, it is difficult to accept that such power can be extended for the purpose of enforcing service of summons through one of the party to the proceedings. The petitioner Company is one of the party to the proceedings and if the Contractors are impleaded as parties, it will be for the authorities to affect the service of summons through the procedure known to law as per the Code of Civil Procedure. If the authorities find that certain documents are required from the petitioner, then certainly orders can be passed calling upon the petitioner Company for production of such documents. Such documents may also help in identification of the contractors, the address of the contractors and such other details which may be found proper by the authority, for the purpose of conducting of the inquiry and its implementation thereof.

7. Even in the decision of this Court in SCA No. 15321/03 dated 08.12.2003, this Court [Coram R.R. Tripathi, J.] has held that if the employer is willing to co-operate with the Provident Fund authorities, he may serve the contractors extending necessary cooperation, and in the event of non-co-operation, the authorities may act in accordance with law.

8. Under the circumstances, it appears that the PF authorities could not have directed the petitioner who is party to the proceedings to serve the summons after collecting them from the office of the authorities, in the absence of any power shown to this Court on the part of the PF Authorities to compel one of the parties to the proceedings to effect service of summons on the other party to the proceedings, which in the present case is the Contractors. Hence I find that the impugned order passed by the PF Commissioner cannot be sustained in the eye of law so far as it relates to directing the petitioner to effect service of summons to the concerned contractors.

9. In view of the aforesaid, the order dated 9.12.2003/12.12.2003 at Annexure 'D' to the petition, so far as it relates to directing the petitioner Company to serve the summons on the Contractors, are quashed and set aside, with a clarification that it will be open for the

PF Authorities to effect service of summons upon the contractors through the manner and method as provided under the Code of Civil Procedure referred to hereinabove. It is also clarified that the remaining part of the order is not challenged by the petitioner, and therefore, the same shall continue to operate. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.

[ JAYANT PATEL, J. ]
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